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6 IN THE UNITED STATES DISTRICT COURT
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10 CHARLES STEVENS,

No. C 09-0137 WHA

11 Petitioner,

DEATH PENALTY CASE

12 v.

13 RON DAVIS, Warden, San Quentin
State Prison

**ORDER SETTING BRIEFING
SCHEDULE FOR PROCEDURAL
DEFAULT AND FOR JOINT
STATEMENT OF RECORD-BASED
CLAIMS**

14 Respondent.

15 _____ /
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17 The Court is in receipt of respondent's statement that he does not intend to file a
18 separate motion to dismiss and, instead, relies on the procedural default defenses raised in the
19 Answer. Respondent's Answer asserts that claims 5, 6, 20, and 23 are procedurally defaulted in
20 whole or in part. Respondent argues that not filing a motion to dismiss will preserve scarce
21 resources of the court and the parties and that petitioner has been afforded two opportunities
22 with the petition and traverse to contest the default.

23 The court notes that claims 13, 14, 17, 19, 20, 22, 26 and 27, which petitioner seeks to
24 dismiss, were not covered by the traverse and at least one of those, claim 20, is alleged to be
25 procedurally defaulted. In an effort to avoid piecemeal litigation on the procedural default
26 issue, the Court directs respondent to file a motion to dismiss based on procedural default no
27 later than February 23, 2015. Petitioner's opposition will be due no later than March 25, 2015
28 and the optional reply will be due within 15 days of service of petitioner's opposition.

1 Additionally, in looking to briefing on the merits of the remaining claims that were
2 covered by the traverse, the Court directs the parties to meet and confer and file a joint
3 statement identifying which claims are record-based and will, therefore, not require an
4 evidentiary hearing. The joint statement is due within seven (7) days of the filing date of this
5 order. The Court will issue a briefing schedule for the record-based claims following receipt of
6 the joint statement.

7 **IT IS SO ORDERED.**

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9 Dated: January 26, 2015.



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WILLIAM ALSUP
11 UNITED STATES DISTRICT JUDGE
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